

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
R. J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625

By: Jeri L. Warhaftig
Kay R. Ehrenkrantz
Deputy Attorneys General
Tel: (609) 984-5065

FILED

APRIL 19, 2007

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

FRANKLIN L. DiSPALTRO, M.D.
LICENSE NO. MA 025003

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

:
:
: Administrative Action
:
: CONSENT ORDER
:
:
:
:
:
:

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information pertaining to Franklin DiSpaltro, M.D. ("Respondent") and his guilty plea to charges pursuant to 26 U.S.C. §7201 in Federal court on March 31, 2006. Respondent is a physician in the State of New Jersey and has been a licensee at all times relevant hereto.

CERTIFIED TRUE COPY

On January 16, 2007, the Attorney General filed an Administrative Complaint, which, in part, alleged the following:

Respondent, was a shareholder and President of 101 Plastic Surgicenter, P.A., a medical practice with an office in West Orange, New Jersey ("his Medical Practice"). Respondent received income from patients of his Medical Practice in the form of checks made payable to himself rather than to his Medical Practice, which he deposited into his personal bank accounts instead of depositing them into the business bank account of his Medical Practice and which he was to have reported on his yearly individual income tax returns; Respondent failed to report the income from these checks deposited into his personal bank accounts on his individual income tax returns; signed federal income tax returns in which he purported to report all of his individual income and which contained written declarations that they were signed under the penalties of perjury; and filed and caused to be filed federal individual income tax returns on which he failed to report all of the income from his Medical Practice.

On November 14, 2005, Respondent entered a plea agreement with the U.S. Attorney, agreeing to plead guilty to one count pursuant to 26 U.S.C. §7201 in exchange for the dismissal of the three other counts pursuant to the same statute, included in a proposed Information. On March 31, 2006, based on the conduct described above, the United States Attorney for the District of New Jersey

filed a four-count Information alleging that Respondent had violated 26 U.S.C. §7201. On March 31, 2006, Respondent entered a guilty plea before the Honorable Joseph Irenas, U.S.D.J., admitting that for tax year 1996, he had filed tax returns which understated his income, and that filing that return was a knowing and willful attempt by him to evade the payment of a substantial part of the income tax which was due and owing to the United States. The charges for 1997, 1998 and 1999 returns were dismissed, in accordance with the plea agreement. Nonetheless, Respondent admitted the same evasive conduct was undertaken in those three tax years.

On or about September 11, 2006, based on his guilty plea to one count of tax evasion, Respondent was sentenced to a five (5) month term of imprisonment, with a recommendation to the Bureau of Prisons by the Honorable Joseph Irenas, U.S.D.J., that Respondent be confined in a community confinement center, specifically, the Kintock Group in Newark, New Jersey. Respondent was also sentenced to a two (2) year period of supervised release, of which the first five months include confinement to his residence, except for approved absences for gainful employment, community services, medical care, educational or training programs, and other approved times. Respondent was sentenced to perform three hundred (300) hours of community service, without compensation. Respondent was also ordered to fully comply with the I.R.S. by filing all

delinquent or amended corporate and personal returns within six months of the sentence date, as well as cooperating by paying all penalties and interest due. Respondent was ordered to pay a fine of \$250,000. Finally, Respondent was ordered to pay a special assessment of \$100.00.

On February 20, 2007, Respondent submitted an Answer to the Board of Medical Examiners admitting the above-delineated events. The Board established March 14, 2007 as the hearing date on the Complaint for both the liability and penalty aspects of the contested matter. Respondent was unable to acquire the necessary permission from the legal authorities to attend the March 14, 2007 hearing, and based on a Motion submitted by Respondent's counsel, Anthony LaBue, Esq., the matter was adjourned to the April, 2007 Board meeting.

The Board finds that Respondent has been convicted of a crime or offense involving moral turpitude and relating adversely to the profession regulated by the Board, contrary to N.J.S.A. 45:1-21(f); has engaged in the use or employment of dishonesty, fraud and deception, contrary to N.J.S.A. 45:1-21(b); has engaged in professional misconduct, a violation of N.J.S.A. 45:1-21(e); and has failed to maintain the ongoing statutory requirement of all Board licensees of good moral character, contrary to N.J.S.A. 45:9-6.

The parties having arrived at a resolution of this matter on the following terms, which the Board finds adequately protective of the public health, safety, and welfare and other good cause having been shown,

IT IS, THEREFORE, ON THIS 19th DAY OF April, 2007,
ORDERED:

1. Respondent Franklin L. DiSpaltro's license to practice medicine and surgery in the State of New Jersey shall be and hereby is suspended for a period of five (5) years, with the first two (2) years served as an active suspension and the remainder served as a period of probation, effective nunc pro tunc March 21, 2007.
2. Respondent shall successfully complete a Board approved ethics course before his active suspension concludes.
3. Respondent shall pay \$10,000 in penalties within thirty days of the date the Order is filed.
4. Respondent shall pay \$ 13,422.82 in costs within thirty (30) days of the date the Order is filed. Costs are comprised of:
 - a. Enforcement Bureau Investigation costs: \$2349.82
 - b. Attorneys Fees of \$10,753.00
 - c. Board administrative costs- court reporter \$320.00
5. A Certificate of Debt will be filed for \$13,422.82 if the full amount is not received within 30 days of entry of the within Order. Payments due herein shall be submitted by certified check or money order payable to the State of New Jersey. Payment shall

be sent via regular mail to William Roeder, Executive Director, Board of Medical Examiners, P.O. Box 183, Trenton, NJ 08625-0183.

6. Respondent shall return his original DEA and CDS registrations to the New Jersey State Board of Medical Examiners, Post Office Box 183, Trenton, New Jersey 08625-0183, within ten (10) days of his receipt of a filed copy of this Order and shall not seek another CDS registration until he is licensed a holder of an active license.

7. Respondent shall immediately advise the DEA of this Order.

8. Respondent shall observe the Directives Applicable to a Licensee Whose License Has Been Disciplined, which are attached to this Order and hereby incorporated by reference.

9. Respondent shall provide proof of compliance with the CME requirements for the 2005-2007 and 2007-2009 biennial period, before he may resume active practice.

10. Respondent shall appear before a Committee of the Board to demonstrate his fitness to practice before he may actively practice as a Board licensee. Said appearance shall take place in or about January, 2009 or as soon as can be reasonably scheduled by the administrative office.

NEW JERSEY STATE BOARD OF MEDICAL
EXAMINERS

By: Sindy Paul, MD, MPH
Sindy Paul, M.D., M.P.H.
Board President

I have read and understood
the within Order and agree
to be bound by its terms.
Consent is hereby given to
the Board to enter this
Order.

Franklin DiSpaltro, M.D.
Franklin DiSpaltro, M.D.

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

FRANKLIN L. DISPALTRO, M.D.

NJ License # MA025003

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social Security Number¹: _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.